JUN 18 2018

June 13, 2013

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gabriel Garcia, Agent for Service of Process
Lu Mar Industrial Metals Company, Ltd.
2120 North Alameda Street
Compton, CA 90222

Guillermo Garcia, General Manager
Lu Mar Industrial Metals Company, Ltd.
2120 North Alameda Street
Compton, CA 90222

Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

I am writing on behalf of California Communities Against Toxics ("CCAT") regarding violations of the Clean Water Act[1] ("CWA" or "Act") and California's General Industrial Storm Water Permit[2] occurring at the industrial facility owned and operated by Lu-Mar Industrial Metals Company, Ltd. ("LMI") at 2120 N. Alameda Street (*see* MAP 1) in Compton ("Facility"). This communication ("Notice Letter") is prepared pursuant to the Act, 33. U.S.C. §§ 1365(a) and (b), and is sent to you and LMI as the responsible owners and/or operators of the Facility in order to: 1) detail violations of the Act and General Industrial Permit occurring at the Facility, and b) provide formal notice that CCAT intends to file a federal enforcement action against LMI for violations of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311, 1342.

CCAT is a non-profit public benefit association dedicated to working with communities to advocate for environmental justice and pollution prevention. CCAT has members living in and around Compton, as well as throughout the Los Angeles River watershed.

I. Background

A. The Clean Water Act

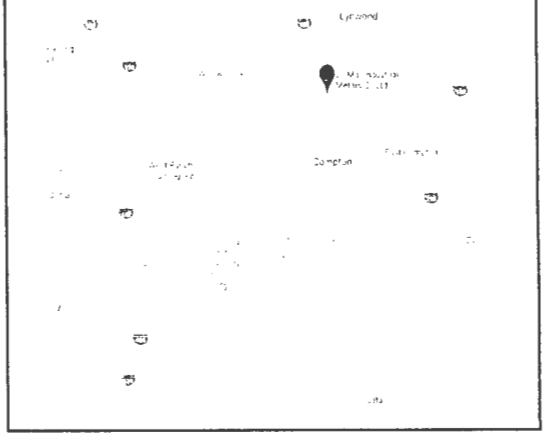
In response to widespread disregard by industrial actors for the social and economic importance of our nation's waters, Congress enacted (and amended) the Act to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To achieve Congressional objectives, the Act is based on the concept that all polluted discharges into the nation's waters are unlawful. However, Congress included an

[1] Federal Water Pollution Control Act 33 U.S.C. § 1251 *et seq.*

[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ ("1997 Permit"), which as of July 1, 2015, was superseded by Order No. 2014-0057-DWQ ("2015 Permit"). As explained herein, the 2015 Permit and the 1997 Permit contain the same fundamental requirements and implements the same statutory mandates. CCAT may herein refer to the two versions interchangeably as the "General Industrial Permit" or "Permit."

exception for industrial polluters in Section 402, which provides that polluted discharges may be lawful if achieved in compliance with an NPDES permit. 33 U.S.C. §§ 1311(a), 1342(p), 40 C.F.R. § 122.26(c)(1). NPDES permits, including the General Industrial Permit, are the Act's principal enforcement tools. *Id.* Because NPDES permits are an exception to a general prohibition, compliance must be strictly enforced. Even after decades of regulatory and enforcement action, water pollution is still a major problem in the U.S.—39% of rivers, 45% of lakes and 51% of estuaries are too contaminated to serve essential social, economic and ecosystem functions.

MAP 1



In California, the United States Environmental Protection Agency ("U.S. EPA") has delegated authority to issue NPDES permits to the State Water Resources Control Board ("State Board"). 33 U.S.C. §§ 1342(b), (d). The Los Angeles Regional Water Quality Control Board ("Regional Board") is responsible for issuance and implementation of the Permit in Region 4, which covers the Facility

Section 505 empowers community members and community groups to file suit in federal court against facilities alleged to be in violation of the Act and/or related permits. 33 U.S.C. § 1365(a). Section 505(b) of the Act requires would-be plaintiffs to give notice to alleged violators at least sixty (60) days before initiating civil action under Section 505(a). 33 U.S.C. § 1365(b). Notice must be given to the alleged violator(s), the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA, the Executive Officer of the water pollution control agency in the State in which the alleged violations occur, and, if the violator is a corporation, the registered agent of the corporation. 40 C.F.R. § 135.2(a)(1).

As detailed herein, LMI and the Facility are in ongoing violation of the Permit and Act. The Facility's unlawful discharges of pollutants adversely affect Compton Creek, the Los Angeles River and downstream water bodies, and endanger the health and welfare of individuals and communities throughout the region. Unless LMI takes appropriate action to remedy ongoing violations of the Act, CCAT will file suit in U.S. District Court following expiration of the 60-day notice period on Aug. 13, 2018. In that action, CCAT will seek civil penalties, injunctive relief, fees and costs for all violations of the Act occurring at the Facility since June 13, 2013. Each separate violation of the Act subjects the violator to *a daily penalty of up to $52,414 per violation*. *See* 33 U.S.C. §§ 1319(d) and 1365(a); 40 C.F.R. § 19.4.

B. Lu-Mar Industrial Metals Company, Ltd.

According to the California Secretary of State, LMI first registered as a California corporation on April 4, 1984. Gabriel Garcia is registered with California's Secretary of State as LMI's Agent for Service of Process. Information available to CCAT from the Secretary of State indicates that the N. Alameda Street address in Compton is the Facility's physical and mailing address.

According to Manta.com, LMI "is a privately held company in Compton, CA and is a Single Location business. Categorized under Ferrous Metal Scrap and Waste. Our records show it was established in 1984 and incorporated in CA. Current estimates show this company has an annual revenue of $13,369,190 and employs a staff of approximately 40." Buzzfile.com largely corroborates this information, indicating that LMI "primarily operates in the Ferrous Metal Scrap and Waste business/industry within the Wholesale Trade - Durable Goods sector. This organization has been operating for approximately 34 years. [LMI] is estimated to generate $13.4 million in annual revenues, and employs approximately 40 people at this single location. This organization is engaged in importing activities at this facility." Bloomberg.com indicates that LMI's "line of business includes assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials."

LMI is an impressive American story in which dedication, savvy, and family commitments lead to real success for hard working immigrants. The Facility serves an important function in a modern economy by ensuring that carbon intensive metal materials are reused and recycled, and that hazardous waste is treated/disposed. LMI also provide critical employment opportunities to a largely local workforce. Unfortunately, CCAT's review of available public records and its own reconnaissance undertakings demonstrate the Facility's operations pose grave public health and environmental justice threats to Compton, and potentially the whole of Southern California. CCAT looks forward to a day when it and companies like LMI can work together to generate benefits for the entire community.

C. The Facility, Industrial Activities and Pollutant Sources

LMI's website indicates that the Facility is the company's "primary yard." The Facility has three Storm Water Pollution Prevention Plans ("SWPPP") on file with the Regional Board—one certified by Tony Casillas and Gabriel Garcia in June of 2015 ("2015 SWPPP"); and two un-certified, un-signed SWPPPs with revision dates of September 11, 2017 ("Unsigned SWPPP 1") and September 27, 2017 ("Unsigned SWPPP 2"). All three SWPPPs indicate that the Facility operates under Waste Discharger Identification ("WDID") No. 4 19I014846. Information available to CCAT indicates this WDID has been "active" since at least 2011.

The Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI") signed by Jose Vazquez on August 5, 2015 ("2015 NOI") certifies that the Facility is classified under Standard Industrial Classification ("SIC") number 5093 (Scrap and Waste Materials). While the 2015 SWPPP is silent on the matter, the two unsigned SWPPPs both confirm that the Facility is classified under SIC 5093.

The 2015 SWPPP indicates that the Facility covers 2 acres, and 100% of the Facility is impervious, comprised of paved surfaces or buildings. The 2015 NOI fails to indicate the size of the Facility, or the percentage of impervious surface. Unsigned SWPPP 1 and Unsigned SWPPP 2 indicate the Facility is approximately 4.0 acres, with 100% impervious surfaces. LMI's website indicates the Facility is "just over 4 acres." A report filed by LMI with the Regional Board in 2017 describes the site as "a flat, rectangular parcel under 4 acres with uniform surface slopes/gradient." Information available to CCAT indicates that the Facility is at least 4 acres; that it is not entirely covered by impervious surfaces; and its slopes/gradients are not

uniform.

Generally, the Facility receives, collects, processes and distributes ferrous and non-ferrous scrap metals. Unsigned SWPPP 2 includes the following description of the Facility and its activities/services: "Lu Mar Industrial Metals, Inc. operations ferrous and non-ferrous industrial metals recycling, including California Redemption Value (CRV) neighborhood recycling center; accepting aluminum cans, glass bottles, plastics, appliances and other recyclable metals. No hazardous wastes or materials are accepted at this site.

"Lu Mar Industrial Metals Company has complete demolition service and routinely demolishes a full variety of structures that results in a significant number of tons of construction material and metals. Lu Mar Industrial Metals, Inc. also serves a broad range of on-site services to assist with construction contractors including an entire fleet of dump trucks that can handle any size project and haul away all debris and recyclable metals and materials; like, boxes and industrial containers for non-ferrous metals, demolition welding services, including shearing and torch cutting by providing cash prices for recycled metals, including the following materials: [E-grade metal (clean tin, corrugated metal); Non-ferrous (aluminum, copper, brass); Plate and structural ('I-beams' and 'H-beams,' plate); Rebar; Unprepared #1 (pipe, channel)." Unsigned SWPPP 2, p. 13.

According to Unsigned SWPPP 2, industrial activities at the Facility include outdoor "C&D" crushing/grinding operations, material handling and storage, loading/unloading, non-hazardous waste storage/waste oil, and "Operational Equipment, Bailer, Machinery and Vehicles," dust and particulate generating processes, "On-Site Storage, or Disposal Scrap Metal Rolloff," "Vehicle and Equipment Fueling, Above-Ground Steel Diesel Storage Tanks, Maintenance, Cleaning Supplies Storage Shed areas," and non-storm water discharges. CCAT alleges that each these industrial activities is a potential pollutant source. LMI identified pollutants associated with these sources as including Total Suspended Solids, Oil & Grease, pH, (unspecified) metals, and "site specific pollutants." *See* Unsigned SWPPP 1, pdf. pgs. 29-31; Unsigned SWPPP 2, p. 21-24. Both Unsigned SWPPP 1 and Unsigned SWPPP 2 state that "[n]o hazardous wastes or materials are accepted at this site." Unsigned SWPPP 1, pdf. pg. 15; Unsigned SWPPP 2, p. 13. Unsigned SWPPP 2 discloses that "[t]he site is almost 100% paved, consisting of an offices area, parking areas, loading area, metal piles and processing area, bailer area, Dock and warehouse areas, diesel fuel storage area (covered, enclosed), non-ferrous metals storage shed area, and maintenance shop area."

LMI's website describes the following industrial "services" offered at the Facility: "metal recycling and processing," "certified destruction," "scrap metal services," and "regular hazardous waste disposal services" (see SCREEN CAPTURE 1).

SCREEN CAPTURE 1

According to information available to CCAT, each of the industrial processes undertaken by LMI at the Facility are pollutant sources which, pursuant to the Permit, must be disclosed and assessed for their potential contribution of pollutants in storm water discharges.

EPA's Industrial Storm Water Fact Sheet for Sector N: Scrap Recycling and Waste Recycling Facilities[3] indicates that polluted discharges from industrial activities like those conducted at the Facility commonly contain PCBs, oil and grease, lubricants, paint pigments or additives, heavy metals, ionizing radioactive isotopes, transmission and brake fluids, fuel, battery acid, lead acid, antifreeze, benzene, chemical residue, heating oil, petroleum products, solvents, ionizing radioactive isotopes, infectious/bacterial contamination, asbestos, metals, total Kjeldahl nitrogen (TKN), battery acid, oily wastes, chemical residue, hydraulic fluids, oils, fuels, grease and other lubricants, accumulated particulate matter, chemical additives, and PCBs from oil-filled electrical equipment, chemical additives, mercury, heavy metals (e.g., zinc, copper, lead, cadmium, chromium) and hydraulic fluids, accumulated particulate matter (ferrous and nonferrous metals, plastics, rubber, other), chlorinated solvents, and arsenic.

Similarly, the Industrial Storm Water Fact Sheet for Sector K: Hazardous Waste Treatment, Storage, or Disposal Facilities[4] indicates that polluted discharges from industrial activities like those conducted at the Facility commonly contain acids, solvents, ammonia, hydroxides, detergents, fuels, total suspended solids (TSS), chemical oxygen demand (COD) pH, biological-oxygen demand (BOD), pesticides, oxygen-demanding substances, sediments, nutrients, organics, toxicants and heavy metals.

Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and developmental or reproductive harm. Discharges of polluted storm water to the local surface waters pose carcinogenic and reproductive toxicity threats to CCAT's members, the public, and adversely affect aquatic ecosystems.

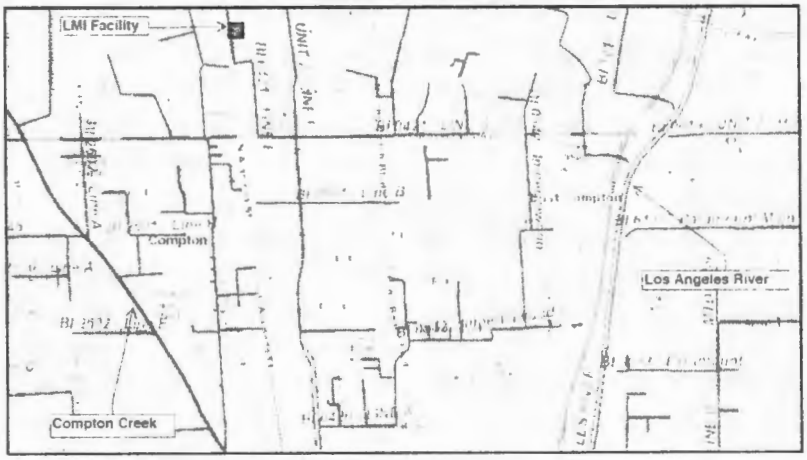
D. Receiving Waters and Discharge Points

LMI's 2015 NOI lists "ocean" as the Facility's receiving waters. The 2015 SWPPP fails to identify any nearby water bodies or receiving waters. Unsigned SWPPP 2 indicates that "[t]he nearest water body is the Compton Creek which flows south along Alameda Street and falls into the Los Angeles River; which is about 2 miles southeast of the Lu Mar site." According to information and belief, storm water from the Facility discharges to a municipal storm water system operated by the County of Los Angeles, which discharges into either Compton Creek (and then into Reach 2 of the LA River), or into Reach 2 of the LA River (see SCREEN CAPTURE 2). From Reach 2, stormwater discharged from the Facility flows through Reach 1, into the LA River Estuary, the Los Angeles/Long Beach Harbor, and finally into the San Pedro Bay and Pacific Ocean. These water bodies are each waters of the United States, and as noted above, are referred to herein collectively as the "Receiving Waters."

[3] *Available at* https://www.epa.gov/sites/production/files/2015-10/documents/sector_n_scraprecycling.pdf.
[4] *Available at* https://www.epa.gov/sites/production/files/2015-10/documents/sector_k_hazwaste.pdf.

The 2015 SWPPP indicates that the Facility has either 1 or 3 discharge points. Annual Reports submitted by LMI between 2013 and 2017 similarly indicate that the Facility has either 1 or 3 discharge points. Unsigned SWPPP 1 and Unsigned SWPPP 2 indicated the Facility has 2 discharge points. Information available to CCAT indicates that the Facility has no fewer than 6 ingress and/or egress points (3 on N. Alameda Street, 1 on Pine Street, and *at least* 2 on Euclid Avenue), all of which are discharge points.

SCREEN CAPTURE 2



With every significant rainfall event, millions of gallons of polluted storm water originating at industrial facilities pour into storm drains and waterways across Los Angeles County. The consensus among agencies and specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. These discharges contribute not only to the impairment of the waters receiving polluted discharges, but all downstream waters including the Pacific Ocean. Contaminated discharges threaten the health of the aquatic and associated terrestrial ecosystems in the receiving waters, we well as the health and welfare of communities that live near and/or use these resources.

The Regional Board issued the "Water Quality Control Plan—Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura County" ("Basin Plan").[5] The Basin Plan identifies Beneficial Uses of the Receiving Waters, which include: Water Contact Recreation ("REC-1"), Non-Contact Water Recreation ("REC-2"), Rare, Threatened, or Endangered Species ("RARE"), Wildlife Habitat ("WILD"), Warm Freshwater Habitat ("WARM"), Ground Water Recharge ("GWR"), Municipal and Domestic Supply ("MUN"), Industrial Service Supply ("IND"), and Industrial Process Supply ("PROC"). *See* Basin Plan, Table 2-1.

A water body is impaired pursuant to section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), when Beneficial Uses are not being achieved due to the presence of one or more pollutants. Both Compton Creek and Reach 2 of the LA River are impaired for, among other pollutants, copper and lead.[6] The Los Angeles River Estuary is impaired by, among other pollutants, chlordane, sediment toxicity, and trash.[7] The Los Angeles/Long Beach Harbor is impaired by at least chrysene, copper, sediment toxicity, mercury, and zinc.[8] The San Pedro Bay

[5] *See* http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/ basin_plan_documentation.html.
[6] *See* https://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml
[7] *Id.*
[8] *Id.*

is impaired by sediment toxicity, and the Long Beach City Beach, one of the San Pedro Bay beaches, is impaired by indicator bacteria.[9]

The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life." Basin Plan at 3-38. The Basin Plan includes a narrative oil and grease standard which states that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses." Basin Plan at 3-29. The Basin Plan provides that "[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses." Basin Plan at 3-37. The Basic Plan provides that "[t]he pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges." Basin Plan at 3-35. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." Basin Plan at 3-24. The Basin Plan provides that "[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." Basin Plan at 3-26. The Basin Plan provides that "[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses." Basin Plan at 3-25. The Basin Plan provides that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." Basin Plan at 3-38. The Basin Plan provides that "[w]aters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses." Basin Plan at 3-37.

The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – "CMC"), for copper of 0.013 mg/L (CMC), and for lead of 0.0025 mg/L (Criteria Continuous Concentration – "CCC"). 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule – "CTR").[10]

The Receiving Waters and associated terrestrial systems are ecologically sensitive. In 2010, then EPA Administrator Lisa Jackson observed that the LA River "deserve[d] the same protection as a pristine river anywhere in our country."[11] Polluted discharges from the Facility cause and/or contribute to the degradation of these already impaired surface waters, beaches, and aquatic dependent wildlife. Although pollution and habitat destruction have drastically altered the natural ecosystem, the Receiving Waters are still essential habitat for dozens of fish and bird species, as well as macro invertebrate and invertebrate species. The public—including tourists, residents and CCAT members—make extensive use of the Receiving Waters for water contact sports, fishing, non-contact recreational, and aesthetic opportunities, such as wildlife observation. Polluted discharges from the Facility expose many people to contaminants that threaten public health and welfare, and impair natural ecosystems that depend on the Receiving Waters.

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[9] *Id.*

[10] These values are expressed as a function of total hardness (mg/L) in the water body and correspond to a total hardness of 100 mg/L, which is the default listing in the California Toxics Rule.

[11] *A River Really Runs Through It*, Wall Street Journal, July 31, 2010 available at: http://www.wsj.com/articles/SB10001424052748704229004575371250531411806

Polluted storm water and non-storm discharges harm the special aesthetic, economic and recreational significance the Receiving Waters have for the public, including CCAT members.

II. Storm Water Permitting and Enforcement[12]

As described above, the Act prohibits discharging pollutants to waters of the United States from a point source except as permitted under an NPDES permit, such as California's General Industrial Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). The 1997 Permit and the 2015 Permit both require that dischargers meet all applicable provisions of the Act's Sections 301 and 402.

A. Translating Statutory Mandates into the General Permit

The Clean Water Act consists of two major parts, one being the provisions that authorize federal financial assistance for municipal sewage treatment plant construction. The other is the regulatory requirement that industrial and municipal dischargers must participate in the NPDES permit program, which includes California's General Industrial Permit for stormwater discharges. The Act has been termed a "technology-forcing" statute because of its emphasis on achieving higher and higher levels of pollution abatement over time. Early on, emphasis was placed on controlling discharges of conventional pollutants (e.g., suspended solids or bacteria), while control of toxic pollutant discharges has been the focus more recently.

DIAGRAM 1
Compliance Process Includes Four
Independent, Mutually Reinforcing Actions

The Act prohibits any discharges of storm water associated with industrial activities (and authorized non-storm water discharges) that have not been subjected to Best Available Technology Economically Achievable ("BAT") for toxic[13] (or non-conventional) pollutants, and Best Conventional Pollution Control Technology ("BCT") for conventional pollutants[14] (33 U.S.C. §§ 1311(b)(2)(A), (B)). However, regulators recognize the strain that strict application of the standards would impose on

[12] The description of standards applicable under the Act and Permit contained in this section II.A and through Section II.F are not intended as a comprehensive recitation of every potential requirement, nor a complete description of each standard addressed. Rather, this section of the Notice Letter is intended to summarize the standards most relevant to facilities like those operated by LMI.

[13] Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead and zinc, among others.

[14] Conventional pollutants include Total Suspended Solids, Oil and Grease, pH, biochemical oxygen demand and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or non-conventional.

industry, as well as the practical challenge of defining and enforcing the standards. Thus, rather than requiring the application of any specific "best available" or "best conventional" technology to each individual discharge of storm water, the Permit implements a far more flexible compliance regime under which compliance with its terms and conditions serve as a proxy for compliance with the Act. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E).

Compliance with the terms and conditions of the Permit, which requires that discharges meet all applicable provisions of Sections 301 and 402, constitutes compliance with the Act for purposes of storm water discharges. Conversely, failures to comply with the Permit's terms and conditions constitute violations of the Act. *See* 1997 Permit, Section C(1); *see also* 2015 Permit, Section XXI(A). The Act's BAT/BCT mandate is translated into the Permit by the requirement that owners and operators design and implement facility-specific Best Management Practices ("BMPs")—structural (e.g. installing berms to direct rainwater away from pollutants or into treatment systems) or operational (e.g. sweeping/vacuuming industrial areas) pollution control strategies tailored to each facility's pollutant sources and associated pollutants.

Compliance with the Permit requires that permittees consistently engage in a multi-prong strategy with four *independent, but mutual-reinforcing* actions (see DIAGRAM 1 above). These four actions include:

1. Executive Planning and BMP Design—assessing a facility's potential pollutant sources and associated pollutants, reviewing pollutant control options, designing BMPs specific to each pollutant/pollutant source, and preparing a Storm Water Pollution Prevention Plan ("SWPPP");
2. On-The-Ground Implementation of BMPs—training staff to implement the SWPPP effectively on a day-to-day basis; and then implementing each of the BMPs delineated in the SWPPP, which may include constructing structural BMPs, ensuring that supplies (e.g. filter socks) are available, monitoring for impending rain events, communicating with staff responsible for BMP inspection/maintenance, etc.;
3. Monitoring and Analysis—complete and record visual observations, collect stormwater samples, send samples to the lab for analysis, submit reports to the State Board via SMARTS; and
4. Annual Evaluation and Corrective Action—complete a comprehensive review of records and data with staff, assess strengths/weaknesses in plan design or implementation, and then amend the SWPPP to improve the effectiveness of existing BMPs and/or design additional BMPs to reduce/prevent polluted discharges.

Each of the four steps is a necessary condition to compliance with the Permit. Because the process is essentially a feedback loop, all actions must be *consistently and sincerely* pursued. Without executive planning and design, a facility's staff is highly unlikely to implement and maintain BMPs that are sufficiently effective to meet BAT/BCT standards. Likewise, without consistent and reliable on-the-ground implementation, no amount of expert planning will prevent and reduce pollutants in stormwater discharges. And failures to monitor industrial activities or to collect data leaves owners/operators without essential information about the efficacy of pollution control measures, which in turn prevents owners/operators from re-engaging in the planning and design of effective corrective actions.

B. The Storm Water Pollution Prevention Plan Requirement

After enrolling in the Permit (i.e. sending an NOI to the relevant Regional Board), the first step toward compliance is the preparation of a SWPPP. A legally adequate SWPPP must comply with every portion of the Permit's mandate, as detailed in Section A of the 1997 Permit and Section X of the 2015 Permit.[15] As discussed above, the SWPPP is the master plan for how a facility will comply with the Permit and Act.

The SWPPP is the heart of the IGP, and the linchpin of each SWPPP under a "general permit"—i.e. a permit with general provisions that must be applied by owners/operators in a wide variety of industrial setting—is the assessment of *facility-specific* industrial processes and sources of pollutants. The SWPPP must include a comprehensive description and assessment of potential pollutant sources, and a list of pollutants likely to be present in industrial stormwater, 2015 Permit, Sections X(G)(1)-(2). Second, the SWPPP must include a full and complete description of both minimum and advanced BMPs to be implemented at the facility, as well an assessment of each BMP's effectiveness. 2015 Permit, Section X(H)(1)-(2). According to the State Board, the 2015 Permit "requires Dischargers to implement a set of minimum BMPs[, which] in combination with any advanced BMPs necessary to reduce or prevent pollutants in industrial storm water discharges, serve as the basis for compliance with this General Permit's technology-based effluent limitations and water quality based receiving water limitations." *See* Summary of Significant Changes for the General Permit for Storm Water Associated with Industrial Activity Order 2014-0057-DWQ at p. 1. Third, the SWPPP must include a site map, which is essential not only for planning and design of BMPs, but also for translating plans into effective on-the-ground implementation. 2015 Permit, Section X(E).

Other provisions include, *inter alia*, a requirement that each SWPPP: i) identify individuals on the Pollution Prevention Team who are responsible for on-the-ground implementation; ii) detail the facility's Monitoring and Reporting Plan ("M&RP," a.k.a. Monitoring Implementation Plan or "MIP") to guide staff about how, when and what to monitor for in polluted discharges and collect samples during qualified storm events; and iii) describe conditions that warrant SWPPP amendments and/or BMP modification.

Section X(G) defines the minimum standards for disclosing and assessing potential pollutant sources specific to each facility. Sections X(C)(1)(a) and X(G)(1)(a) requires that every SWPPP "[identify] describe [and evaluate] each industrial process including: manufacturing, cleaning, maintenance, recycling, disposal and any other activities related to the process." Permittees are not required to describe activities unrelated to water quality, and may use general narratives as necessary to protect trade secrets and intellectual property. However, owners and operators must

[15] Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. *See* 2015 Permit, § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit, §§ X(G)(2), (4), (5). Section X(E) of the 2015 Permit requires that the SWPPP map depict, *inter alia*, all storm water discharge locations.

faithfully comply with the fundamental policy goal—to formulate pollution control strategies based on an accurate picture of a facility's potential impacts to water quality and public health.

Section X(G)(2), which requires the disclosure and assessment of potential pollutant sources, reads:

> "*2. Assessment of Potential Pollutant Sources*
>
> *a. The Discharger shall ensure that the SWPPP includes a narrative assessment of all areas of industrial activity with potential industrial pollutant sources. At a minimum, the assessment shall include:*
>
> *i. The areas of the facility with likely sources of pollutants in industrial storm water discharges and authorized NSWDs;*
>
> *ii. The pollutants likely to be present in industrial storm water discharges and authorized NSWDs;*
>
> *iii. The approximate quantity, physical characteristics (e.g. liquid, powder, solid, etc.), and locations of each industrial material handled, produced, stored, recycled, or disposed;*
>
> *iv. The degree to which the pollutants associated with those materials may be exposed to, or mobilized by contact with, storm water;*
>
> *v. The direct and indirect pathways by which pollutants may be exposed to storm water or authorized NSWDs...* "

Taken as a whole, romanettes (i) through (v) establish a clear and broad legal mandate. SWPPPs must include a comprehensive narrative assessment of pollutants with the potential to affect water quality. The SWPPP is considered the heart of the Permit because it is the essential link between executive planning and design efforts and on-the-ground implementation by staff. The SWPPP must identify (i.e. disclose) and assess facility-specific sources of pollutants; and then describe customized BMP pollution control measures.

C. The Permit's Discharge Standards

The Permit contains three discharge standards: 1) Section III's Discharge Prohibitions; 2) Section V's Effluent Limitations; and 3) Section VI's Receiving Water Standards. Each of the applicable discharge standards detail individual, but potentially overlapping, requirements for industrial stormwater discharges. *See* 1997 Permit, Section A(2); 2015 Permit, Section III(C).

1. *Discharge Prohibitions*

The Permit contains an outright prohibition on "non-storm water discharges" ("NSWD") directly or indirectly to waters of the United States. 1997 Permit, Section A(1); 2015 Permit, Section III(B). The Discharge Prohibitions also proscribe storm water discharges that cause or threaten to cause pollution, contamination, or nuisance as defined in section 13050 of the State Water Code. 1997 Permit, Section A(2); 2015 Permit, Section III(C).

2. *Effluent Limitations*

The Permit's Effluent Limitations require, *inter alia*, the following: i) dischargers shall implement BMPs that comply with the BAT/BCT requirements to reduce or prevent discharges

of pollutants in their storm water discharges in a manner that reflect best industry practice considering technological availability and economic practicability and achievability; and ii) dischargers located with a watershed for which a Total Daily Maximum Load ("TMDL") has been approved by U.S. EPA shall comply with any applicable TMDL-specific permit requirements that have been incorporated into the Permit. *See* 1997 Permit, Section B(3), 2015 Permit, Section V(A); *see also* 1997 Permit, Section A(8); 2015 Permit, Section X(H).

3. *Receiving Water Limitation*

The Permit's Receiving Water Limitations prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS"). 1997 Permit, Section C(2); 2015 Permit, Section VI(A). Discharges that contain pollutants in excess of or that are otherwise inconsistent with an applicable WQS violate these Receiving Water Limitations. Applicable WQS's are delineated in, *inter alia*, the Basin Plan[16] and the California Toxics Rule.[17] *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999) (holding that industrial storm water discharges must strictly comply with water quality standards including those criteria listed in the applicable basin plan). The Permit's Receiving Water Limitations also prohibit storm water discharges (and authorized non-storm water discharges) to surface waters that adversely impact human health or the environment. 1997 Permit, Section C(1); 2015 Permit, Section VI(B). Thus, all discharges containing pollutant concentrations exceeding WQSs or with levels that adversely impact the environment, and/or human health constitute violations of the Permit.

D. The Permit's Monitoring Requirements

The principal monitoring requirements imposed by the 1997 Permit and 2015 Permit are substantially identical. *Compare* 1997 Permit, Sections B(3)-(16) *to* 2015 Permit, Sections X(I) and XI(A)-(D). First, the Permit requires that each SWPPP contain an M&RP (or MIP) that identifies the team members and their responsibilities for monitoring/sampling, justifications for variances to the Permit's standard provisions, as well as a plan and any documents necessary to collect and submit stormwater samples. *See* 2015 Permit, Section I. A legally adequate M&RP ensures that BMPs achieve BAT/BCT, and is evaluated at least annually.

The 1997 Permit required facilities conduct quarterly visual observations of all drainage areas for the presence of authorized and unauthorized non-storm water discharges. 1997 Permit, Section B(3). The 2015 Permit increased the frequency of visual observations to monthly, and requires that observations be completed at the same time samples are collected. 2015 Permit, Section XI(A). The Permit requires that facilities complete visual observations of storm water discharges from one event per month during the wet season. 1997 Permit, Section B(4); 2015 Permit, Section XI(A)(2). Dischargers must document observations, and any responses taken to address problems observed, including revisions made to the SWPPP. 1997 Permit, Sections B(3)-(4); 2015 Permit, Sections XI(A)(2)-(3). The Permit requires facilities to collect samples of storm

[16] The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards in the Basin Plan consist of water quality criteria expressed as pollutant concentration levels determined by State or federal agencies to be protective of designated Beneficial Uses.

[17] *Criteria for Priority Toxic Pollutants for the State of California.* 65 Fed. Reg. 31712 (May 18, 2000); 40 C.F.R. § 131.38.

water discharges from each of the discharge locations from at least two storm events under the 1997 Permit, and at least 4 storm events under the 2015 Permit[18]—making good faith efforts that water collected is representative of the discharge from each discharge point. 1997 Permit, Sections B(5), (7); 2015 Permit, Sections XI(B)(1)-(5).

The Permit's Section X.G.2 (quoted and discussed above) is operationalized through Section XI.B.6, which supplies the mandate with respect to monitoring and analyzing stormwater discharges. Section XI.B.6 reads:

> 6. *The Discharger shall analyze all collected samples for the following parameters:*
>
> a. *Total suspended solids (TSS) and oil and grease (O&G);*
>
> b. *pH (see section XI.C.2);*
>
> c. *Additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment (Section X.G.2). These additional parameters may be modified (added or removed) in accordance with any updated SWPPP pollutant source assessment;*
>
> d. *Additional applicable parameters listed in Table 1 below. These parameters are dependent on the facility Standard Industrial Classification (SIC) code(s);*
>
> e. *Additional applicable parameters related to receiving waters with 303(d) listed impairments[19] or approved TMDLs based on the assessment in Section X.G.2.a.ix.*
>
> f. *Additional parameters required by the Regional Board[...];*
>
> g. *For dischargers subject to Subchapter N, additional parameters specifically required by Subchapter N[...].*

Thus, absent intervention by a regional board pursuant to sub-paragraph (f), Section XI.B.6 details four (4) categories of parameters dischargers must analyze each sample for: 1) basic parameters (TSS, O&G and pH) applicable to every permittee [detailed in sub-paragraphs (a) and (b)]; 2) facility-specific parameters based on the facility's SIC code, which are included at Table 1 of the Permit [detailed in sub-paragraph (d)]; 3) facility-specific parameters found in extrinsic regulatory sources [detailed in sub-paragraphs (e) and (g)]; and 4) facility-specific parameters deriving from the pollutant source assessment each discharger must complete to comply with Section X.G.2 [detailed in sub-paragraph (c)].

Section XI.B.6.c is unique in this section because it is explicitly linked to other activities described in the SWPPP, and depends on prior compliance activities by owners/operators. Section XI.B.6.c does not explicitly list additional parameters or cite to another source where

[18] The 2015 Permit requires facilities to collect samples from each discharge location from two storm events within the first half of each reporting year (July 1-Dec. 31) and two storm events from the second half of each reporting year (Jan. 1-Jun 30).

[19] "Impaired waters" are water bodies that do not currently meet their applicable designated uses and water quality standards. Stormwater discharges to impaired waters may trigger additional control measures and monitoring requirements.

additional parameters are listed. Rather, it relies entirely on an honest effort by each permittee to analyze all storm water samples for 'facility-specific' parameters that they themselves identify and assess as part of developing the facility's SWPPP. Sub-paragraph (c) requires dischargers to analyze each sample for all pollutants (and their indicators) identified in the source assessment required by Section X.G.2. Therefore, if an owner/operator identifies copper and iron as "facility-specific" pollutants as part of its pollutant source assessment, then all storm water samples must be analyzed for copper and iron.

The primary objective of the Permit's monitoring requirements is to detect and measure concentrations of pollutants in a facility's storm water discharges to ensure BMPs are effective in maintaining compliance with the Permit's Effluent Limitations, Receiving Water Limitations and Discharge Prohibitions. *See* 1997 Permit, Section B(2); *see also* 2015 Permit, Section X(I). A facility's monitoring plan must be designed and implemented to test the effectiveness of BMPs—both as designed and as implemented. Visual observation records, lab analyses/reports and other data resulting from a facility's monitoring plan provide the foundation for assessing compliance with the Permit's three discharge standards. Visual observation records may uncover a pattern that can be fixed by more regular housekeeping. However, the emphasis of monitoring must be on collecting stormwater samples and analyzing those samples for pollutants associated with a facility's industrial activity; and then comparing those results to the various numeric and narrative limits established for the purpose of assessing BMP effectiveness.

E. The Permit's Reporting Requirements

Permittees must comply with all reporting requirements in Sections XV and XVI of the 2015 Permit.[20] The fundamental requirements are to collect samples of storm water, submit those samples to a certified lab for analysis, and then submit the data via SMARTS within thirty (30) days of obtaining results. 2015 Permit, § XI(B)(11).

As described above (see DIAGRAM 1), each of the various elements required by the Permit are important in that they ultimately operate as part of a feedback loop in which the efficacy of any one part is dependent on the other parts having been completed. Nevertheless, the Permit's inflection point is the requirement that each owner/operator complete an Annual Comprehensive Facility Compliance Evaluation ("Annual Compliance Evaluation") and then re-engage in the planning and design process to address deficiencies that are detected when reviewing the prior year's compliance efforts. At a minimum, the Annual Compliance Evaluation shall consist of: i) a review of sampling data, visual observation and inspection records conducted during the year; ii) an inspection of all areas of industrial activity and associated potential pollutant sources for evidence of, or the potential for, pollutants entering the storm water conveyance system; iii) an inspection of all drainage areas previously identified as having no exposure to industrial activities; iv) an inspection of equipment needed to implement BMPs; v) an inspection of any BMPs; vi) a review and effectiveness assessment of all BMPs to determine if the BMPs are properly designed, implemented, and are effective in reducing and preventing pollutants in storm water discharges; and vii) an assessment of any other factors needed to comply with the requirements in Section XVI.B.

[20] The 1997 Permit's monitoring and reporting requirements, found in Section B, sought to achieve the same objectives and are substantially identical.

The failure to upgrade, revise and/or add BMPs, and amend the SWPPP, in response to deficiencies that were (or should have been) discovered during an Annual Compliance Evaluation is an independent and serious violation.

F. Numeric Action Levels and Exceedance Response Actions

In response to a general contempt for the *voluntary* approach embodied in the 1997 Permit, the State Board formalized an iterative process in the 2015 Permit with the establishment of an Exceedance Response Action ("ERA") requirement—a compulsory BMP review and revision process. *See* 2015 Permit Factsheet at 55-60. The ERA requirement codifies the feedback loop referred above by mandating that facility operators/owners engage in corrective planning and design when their data demonstrates pollutant concentrations exceed either annual or instantaneous Numeric Action Levels ("NALs"). 2015 Permit, Section XII. NALs are similar to benchmarks, but are generally more lenient and represent averaged concentrations from multiple discharge points over an entire year. NALs are intended as triggers for the ERA program's reporting requirement. And while exceedances of a NAL demonstrate that a facility has failed and continues to fail to implement pollution prevention measures required by the Permit, the State Board did not intend for NALs to represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[21]

The NALs are not a means to determining compliance with the effluent or receiving water limitations. The Fact Sheet that accompanies the Permit explains, through its structure and express language, that NALs are not intended to determine compliance with the Permit or Act. Fact Sheet, Section II p. 15-21. The NALs operate to signal to owner/operators, the public and state agencies when a facility's BMPs are clearly deficient, and therefore immediate remedial actions (i.e. ERA procedures) must begin. *See* 2015 Permit, § XII.A

The Permit requires permittees to develop and implement ERAs whenever a NAL exceedance occurs during a reporting year. The first time a NAL exceedance occurs for any one parameter, a permittee's status is changed from Baseline to Level 1. At Level 1 status, a permittee is required to evaluate and revise, as necessary, its BMPs with the assistance of a Qualified Industrial Stormwater Practitioner ("QISP") and submit a report prepared by the QISP. Specifically, the permittee will enter Level 1 status on July 1 and must conduct an evaluation by October 1 and submit the report by January 1. *See* 2015 Permit, § XII.C.

The second time a NAL exceedance occurs for the same parameter in a subsequent reporting year, a permittee's status is changed from Level 1 to Level 2. At Level 2 status, a permittee is required to submit a Level 2 ERA Technical Report. Specifically, the permittee must prepare a Level 2 ERA Action Plan by January 1. On the next January first, the permittee in Level 2 status must prepare and submit a Level 2 ERA Technical Report describing all BMPs implemented and assessing their effectiveness. *See* 2015 Permit, § XII.D.

[21] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

G. Community Enforcement

In designing the Act, Congress acknowledged "the Government simply is not equipped to take court action against the numerous violations [...] likely to occur [under the Act]." 116 Cong. Rec. 33,104 (1970) (statement of Sen. Hart).[22] In anticipating this challenge, Congress crafted Section 505 to support local control and encourage affected communities to enforce the Act as private attorneys general. Community enforcement actions, therefore, fill a critical social role by enforcing the Act's mandate and are "welcomed participants in the vindication of environmental interests." *Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2nd Cir. 1976). President Trump's EPA has stated that "[c]itizen enforcement actions are an integral component of the Acts' overall enforcement schemes. The United States values the contribution that responsibly-pursued citizen suits make towards protecting our nation's air and waters."

Community enforcement actions also fill an essential economic role. Water pollution results in inefficient economic outcomes caused by market failures that are frequently associated with common pool resources like surface waters and oceans. Enforcement actions under Section 505 help correct these market failures by forcing industrial facilities to internalize the social welfare impacts (i.e. costs) of water pollution that would otherwise be borne by society. Society at large pays handsomely when business owners fail to operate efficiently. The most common costs are associated with human illness (health care costs, lost productivity, etc.), habitat loss, ecosystem service disruption (e.g. clean irrigation water for agriculture), wildlife disturbances, and detrimental impacts to tourism.

III. Violations of the Clean Water Act and the Storm Water Permit

In California, any person who discharges storm water associated with certain classified industrial activity must comply with the terms of the Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Findings, ¶ 6. Accordingly, LMI is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) ("[l]imitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect"); *see also CSPA v. River City Waste Recyclers*, 2016 U.S. Dist. LEXIS 120186, at *13-18 (E.D.Cal. Sep. 2, 2016).

CCAT's review of digital and hard copy files available from the State and Regional Boards, along with its own reconnaissance efforts demonstrate that LMI has *failed to fully comply with*

[22] *See also* 116 Cong. Rec. 33,104 (1970) (statement of Sen. Muskie) "I think it is too much to presume that, however well staffed or well intentioned these enforcement agencies are, they will be able to monitor the potential violations of all the requirements contained in the implementation plans that will be filed under this act, all the other requirements of the act, and the responses of the enforcement officers to their duties."

any of the Permit's requirements for, at least, the last 5 years. Specifically, LMI has: A. failed to develop or implement BMPs that achieve BAT/BCT; B. discharged and continues to discharge polluted storm water in violation of the Permit's Receiving Water Limitations; C. failed to develop, implement, and/or revise a legally adequate SWPPP; D. failed to develop, implement and/or revise a legally adequate M&RP; E. consistently violated and is in ongoing violation of the Permit's reporting requirements.

A. Discharges of Polluted Storm Water in Violation of the Storm Water Permit's Requirement to Develop and Implement BMPs that Achieve BAT/BCT.

Effluent Limitation B.3 of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT/BCT. The 2015 Permit includes the same requirement. *See* 2015 Permit, Effluent Limitation V.A.

Information available to CCAT indicates that BMPs that achieve BAT/BCT have not been developed or implemented at the Facility. In addition to completing a detailed review of the Facility's various SWPPPs, CCAT conducted its own observations during and after the rain event on March 21 and 22, 2018. All evidence available to CCAT indicates that LMI has failed and continues to fail to develop and/or implement BMPs that achieve BAT/BCT.

CCAT puts LMI on notice that the Permit's Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Appendix 1 (setting forth dates of significant rain events measured at a nearby rain gauge).[23] These discharge violations are ongoing and will continue every time LMI discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. LMI has been in violation of the Effluent Limitation since at least June 13, 2013 and CCAT will update the dates of violations when additional information and data become available. Each time LMI discharges polluted storm water in violation of Effluent Limitation B.3 of the 1997 Permit and Effluent Limitation V.A of the 2015 Permit is a separate and distinct violation of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). LMI is subject to civil penalties for all violations of the Clean Water Act occurring since June 13, 2013.

Further, CCAT puts LMI on notice that the Permit's Effluent Limitation is a separate, independent requirement with which LMI must comply, and that carrying out the iterative process triggered by exceedances of the NALs does not amount to compliance. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[24]

[23] A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.

[24] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. However, an exceedance of an NAL may indicate a failure to develop BAT/BCT, and/or an exceedance of a water quality standard.

B. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations.

Receiving Water Limitation C.1 of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same requirement. *See* 2015 Permit, Receiving Water Limitation VI.B. Stormwater discharges containing pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Permit. *See* 1997 Permit, Receiving Water Limitation C.1; 2015 Permit, Receiving Water Limitation VI.B.

Receiving Water Limitation C.2 of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").[25] The 2015 Permit includes the same requirement. *See* 2015 Permit, Receiving Water Limitation VI.A. Discharges that contain pollutants in excess of an applicable WQS violate the Permit. *See* 1997 Permit, Receiving Water Limitation C.2; 2015 Permit, Receiving Water Limitation VI.A.

Information available to CCAT leads it to conclude that the Facility's storm water discharges contain concentrations of pollutants that can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from the Facility also likely adversely impact human health. These harmful discharges from the Facility are violations of the Storm Water Permit Receiving Water Limitation. *See* 1997 Permit, Receiving Water Limitation C.1; 2015 Permit, Receiving Water Limitation VI.B.

Information available to CCAT also indicates that storm water discharges from the Facility cause or contribute to violations of WQSs. Discharges of storm water containing levels of pollutants that exceed WQSs are violations of the Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C.2; 2015 Permit, Receiving Water Limitation VI.A.

CCAT puts LMI on notice that the Permit's Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Receiving Water Limitations.

Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C.2 of the 1997 Permit, Receiving Water Limitation VI.A of the 2015 Permit, and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C.1 of the 1997 Permit, Receiving Water Limitation VI.B of the 2015 Permit, and Section 301(a) of the Act,

[25] The Basin Plan designates Beneficial Uses for the Receiving Water. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Water's Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

33 U.S.C. § 1311(a). LMI has been in violation of the Receiving Water Limitations since at least June 13, 2013 and CCAT will update the dates of violation when additional information and data becomes available. LMI is subject to the imposition of daily civil penalties for each violation of the Act occurring since June 13, 2013.

Further, CCAT puts LMI on notice that 2015 Permit Receiving Water Limitations are separate, independent requirements with which LMI must comply, and that carrying out the iterative process triggered by exceedances of the NALs does not amount to compliance with the Receiving Water Limitations. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent water quality based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a water quality standard.[26]

C. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan.

The Permit requires permittees to develop and implement a SWPPP that meets the Permit's conditions prior to conducting, and in order to lawfully continue, industrial activities. A permittee has an ongoing obligation to revise the SWPPP as necessary to ensure compliance with the Permit. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

1. 1997 Permit SWPPP Requirements.

Section A.1 and Provision E.2 of the 1997 Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992 (or prior to beginning industrial activities) that meets all of the requirements of the 1997 Permit. The objectives of the 1997 Permit SWPPP requirements are to identify *and evaluate* sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility, and to facilitate the implementation of site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 1997 Permit, Section A.2. These BMPs must be designed (and then implemented) to achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A.9 of the 1997 Permit, and must be revised as necessary to ensure compliance with the Permit. *See* 1997 Permit, Sections A.9 and 10. Sections A.3 – A.10 of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge systems, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, location of nearby storm drains (where applicable), and other features

[26] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. However, an exceedance of an NAL may indicate a failure to develop BAT/BCT, and/or an exceedance of a water quality standard.

of the facility and its industrial activities (*see* 1997 Permit, Section A.4); a list of significant materials handled and stored at the site (*see* 1997 Permit, Section A.5); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (*see* 1997 Permit, Section A.6).

Sections A.7 and A.8 of the 1997 Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

2. 2015 Permit SWPPP Requirements.

As with the SWPPP requirements of the 1997 Permit, Sections X.A - H of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objectives of the 2015 Permit SWPPP requirements are still to identify *and evaluate* sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to guide the implementation of site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X.C.

The SWPPP must include, among other things, a narrative description *and* summary of all industrial activity, potential sources of pollutants, and potential pollutants (2015 Permit, §§ X(C)(1)(a), X(G)(1)(a)); a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, identification of areas of soil erosion and impervious areas, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutant control measures. *See* 2015 Permit, Section X.A-H. The SWPPP must also contain *a narrative description* of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification of non-storm water discharges and the elimination of unauthorized non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities, and; the identification of individuals and their current responsibilities for developing and implementing the SWPPP. *Id.*

Further, permittees must establish individuals who will implement the requirements of the Permit including conducting the required visual observations, collection of storm water samples, and otherwise preparing for storm events as set forth in each facility SWPPP. *See* 2015 Permit, Section X.D.1. For example, the SWPPP must include the identity and position of individuals who will carry out the permit requirements, including specifically the responsibilities, duties, activities each member is in charge of. *Id.* The SWPPP must also contain "procedures to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned team members are temporarily unavailable (due to vacation, illness, out of town business, or other absence)." *Id.* at Section X.D.1.c.

Finally, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Section X.A-B. Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Section X.B and Section XV.

3. *LMI Has Violated and Continues to Violate the Storm Water Permit's SWPPP Requirements.*

Information available to CCAT indicates that LMI has been and continues to conduct operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP. First and foremost, and as noted by the Regional Board in its February 10, 2016 Notice of Non-Compliance ("2016 NNC"), LMI failed to update the Facility's SWPPP used for compliance with the 1997 Permit. LMI was operating for as many as 757 days under the 2015 Permit without a SWPPP that even attempted to meet the 2015 Permit's requirements. As noted below, CCAT also alleges that Unsigned SWPPP 1 and Unsigned SWPPP 2 are legally inadequate, which means that LMI was operating the Facility without an adequate SWPPP for at least the last 5 years, which translates to *at least* 1,825 daily violations of the Permit and Act.

The 2015 SWPPP consists of 16 total pages, only 10 of which contain any substantive material. The 2015 SWPPP is among, if not the worst storm water planning document CCAT has ever reviewed. The document is patently inadequate, even under the less stringent SWPPP requirements of the 1997 Permit.

The 2015 SWPPP is facially inadequate and fails for, *inter alia,* the following reasons:

i. the document indicates that it had not been subject to a comprehensive review or revision since 2001;
ii. the document contains internal inconsistencies that are material to its sufficiency as the key planning document for Permit compliance (e.g. the document indicates that the Facility encompasses approximately 2 acres, but only describes 1 acre of specific industrial activities);
iii. the document fails to adequate disclose/identify potential pollutant sources and pollutants at the Facility;
iv. the document fails to provide an adequate assessment of potential pollutant sources (*see* 1997 Permit, Section A.6; 2015 Permit, Sections X.G and H),
v. the document fails to describe BMPs for each (or any) pollutant source;
vi. the document fails to assess BMP effectiveness as required by Section X.G.2.a.vii-viii of the 2015 Permit;
vii. the document fails to describe BMPs that achieve the BAT/BCT standards; and
viii. the document fails to identify all discharge points.

Unsigned SWPPP 1 and Unsigned SWPPP 2 similarly fails to meet the Permit's objectives for pollution prevention planning, and do not comply with the 2015 Permit's requirements. Unsigned SWPPP 1 and Unsigned SWPPP 2 violate the Permit for, *inter alia,* the following reasons:

i. the document's site maps fail to include required components;
ii. the documents fail to comply with the Permit's Performance Standards (*see* 2015 Permit, Sections X.C.1.a and X.C.1.b);
iii. the documents lack adequate descriptions and assessments of potential pollutant sources and pollutants, specifically including those beyond the walls that largely encompass the Facility (*see* 2015 Permit Sections X.G.1 and X.G.2);
iv. the documents fail to assess the effectiveness of BMPs per Section X.G.2.a.vii-viii of the 2015 Permit;
v. the documents fail to describe BMPs that achieve BAT/BCT standards, and those BMP descriptions it does include fail to include required elements (*see e.g.* 2015 Permit, Sections X.H.2.b.i and X.H.2.b.iii);
vi. the documents fail to include a complete monitoring and reporting program;
vii. the documents fail to identify all discharge points.

Every day the Facility has operated and continues to operate with an inadequately developed, implemented, and/or revised SWPPP is a separate and distinct violation of the Permit and the Clean Water Act. LMI has been in daily and continuous violation of the Permit's SWPPP requirements since at least June 13, 2013. These violations are ongoing and continuous, and CCAT will include additional violations when information becomes available. LMI is subject to civil penalties for all violations of the Clean Water Act occurring since June 13, 2013.

D. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program.

The Permit requires permittees to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting, and in order to continue, industrial activities.[27] The Permit also places an ongoing obligation on each permittee to revise the M&RP as necessary to ensure compliance with the Permit. LMI has been and continues to conduct operations at the Facility with a legally inadequate M&RP. Information available to CCAT indicates that the Facility has failed and continues to fail to collect and analyze samples from qualifying storm events as required by the Permit. These consistent and ongoing failures constitute negligent or intentional violations of the Act. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

1. 1997 Permit M&RP Requirements.

Section B.1 and Provision E.3 of the 1997 Permit require facility operators to develop and implement an adequate M&RP by October 1, 1992 (or prior to the commencement of industrial activities at a facility) that meets all of the requirements of the Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to

[27] The 2015 Permit refers to the M&RP as the Monitoring Implementation Plan or "MIP."

ensure BMPs are effective in complying with the Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B.2.

The M&RP provides essential information about whether BMPs are effectively reducing and/or eliminating pollutants at the facility. Thus, failures to collect and analyze stormwater samples prevents compliance because permittees are then without information necessary to make revisions to its M&RP so as to stay in compliance with the Permit's substantive requirements. *Id.* Sections B.3 – 16 of the 1997 Permit set forth the M&RP requirements.

Specifically, Section B.3 requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B.4 requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B.3 and B.4 further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B.3 and B.4. Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B.4. Sections B.5 and B.7 of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

According to information available to CCAT, LMI was required under the 1997 Permit to test each sample collected for, *inter alia*, pollutants detailed below in TABLE 1.

TABLE 1

BENCHMARK AND NAL VALUES APPLICABLE TO THE FACILITY

PARAMETER/ POLLUTANT	EPA BENCHMARK	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH	6.0-9.0 s.u.	n/a	6.0-9.0 s.u.
TSS	100 mg/L	100 mg/L	400 mg/L
O&G	15 mg/L	15 mg/L	25 mg/L
SC	200 uhmos/cm	n/a	n/a
TOC	110 mg/L	110 mg/L	n/a
COD	120 mg/L	120 mg/L	n/a
Al	0.75 mg/L	0.75 mg/L	n/a
N+N	0.68 mg/L	0.68 mg/L	n/a
Fe	1.0 mg/L	1.0 mg/L	n/a
Zn	0.117 mg/L	0.26 mg/L	n/a
Ni	1.02 mg/L	1.02 mg/L	n/a
Mg	0.064 mg/L	0.064 mg/L	n/a
Cr	0.024 mg/L	n/a	n/a
Pb	0.816 mg/L	0.26 mg/L	n/a

Section B(7)(d) of the 1997 Permit allows for the reduction of sampling locations in very limited circumstances when "industrial activities and BMPs within two or more drainage areas are

substantially identical." If a discharger seeks to reduce sampling locations, the "[f]acility operators must document such a determination in the annual report." *Id.*

2. 2015 Permit M&RP Requirements.

As with the 1997 M&RP requirements, Sections X.I and XI.A - D of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised in response to analytics data whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

As an *increase* in observation frequency over the 1997 Permit, Section XI.A of the 2015 Permit requires all visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI.A.2. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI.A.3.

Section XI.B.1 - 5 of the 2015 Permit requires permittees to collect storm water discharge samples from a qualifying storm event[28] from each discharge location, and within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. Facilities that are in a Compliance Group, must make specific certifications on SMARTS (*see id.* at XIV), and must collect and analyze storm water samples from one (1) qualifying storm event within the first half of the reporting year[29] (July 1 to December 31), and one (1) qualifying storm event within the second half of the reporting year (January 1 to June 30). *Id.* at XI.B.3. Section XI.B.11 of the 2015 Permit, among other requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining results for each sampling event.

The parameters to be analyzed are also consistent with the 1997 Permit. Specifically, Section XI.B.6.a - b of the 2015 Permit requires permittees to analyze samples for TSS, oil & grease, and pH. Section XI.B.6.c of the 2015 Permit requires permittees to analyze samples for pollutants associated with all industrial operations. Section XI.B.6.d requires additional parameter analysis based on a facility's SIC code. *See* 2015 Permit, Table 1. Finally, Section XI.B.6 of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

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[28] The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).

[29] A reporting year is defined as July 1 through June 30. 2015 Permit, Findings, ¶ 62(b).

Finally, as in the 1997 Permit, the 2015 Permit requires storm water samples be collected from all discharge locations. 2015 Permit, Section XI.B.5. The requirements to allow for reduced sample collection locations were strengthened in the 2015 Permit and must provide a Representative Sampling Reduction Justification, revise the M&RP, and provide both to the Regional Board via SMARTS. *See* 2015 Permit, Section XI.C.4.

3. LMI Has Violated and Continues to Violate the Storm Water Permit M&RP Requirements.

LMI has been and continues to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, LMI has consistently failed and continues to fail to collect samples as required by the Permit, to collect samples from each discharge location, and to analyze samples collected for the full suite of pollutants required by the Permit. *See* 2015 Permit, Fact Sheet, Section J.3.b.iii ("This General Permit requires Dischargers to control its discharge as necessary to meet the receiving water limitations, and to select additional monitoring parameters that are representative of industrial materials handled at the facility (regardless of the degree of storm water contact or relative mobility that may be related to pollutants causing a water body to be impaired."). CCAT has not been able to obtain any data from any storm water samples at the Facility. Further, LMI fails to conduct the required visual monitoring and/or maintain records of any monitoring. *See* 1997 Permit, Section B.3; *see also* 2015 Permit, § XI.A.1. As described above, analyzing storm water sample data and visual observation records are conditions precedent to an assessment of whether BMPs implemented at the Facility are effective in reducing all pollutants in the discharge, i.e. without storm water analytical data or visual monitoring records, LMI can not complete annual evaluations.

SCREEN CAPTURE 1

Guillermo Garcia - 2 - December 12. 2017
Gabriel Garcia
Lu Mar Industrial Metals Company

According to the data available on the Storm Water Multiple Application and Report Tracking System (SMARTS) database. Lu Mar Industrial Metals Company has not collected any stormwater samples from the Facility since October 1, 2013, however, other enrollees within a 1 mile radius of the Facility have collected stormwater samples from their facilities during the same period

Based on information obtained from the National Oceanic and Atmospheric Administration[3] (NOAA). using data from the Los Angeles Downtown/USC rain gauge located approximately 8 miles North West of the Facility, the Facility has experienced an annual rainfall of 19 inches of rain during the FY 2016-2017 reporting period. 9.65 inches of rain during the FY 2015-2016 reporting period. 8.46 inches during the FY 2014-2015 reporting period and 5.99 inches during the FY 2013-2014 reporting period Based on information obtained from NOAA, the Facility has experienced significant storm events since October 1, 2013. Therefore, stormwater samples should have been collected during that period.

Failure to collect and analyze stormwater samples is a violation of Section XI.B.2 of the 2014 General Permit

As of May 25, 2018, LMI has failed to upload any data regarding pollutant concentrations in storm water collected during the 2017-2018 winter. CCAT alleges that LMI has continued its pattern of failing to collect sufficient samples and failing to analyze those samples for all parameters required by the Permit.

LMI's failure to conduct sampling and monitoring as required by the Permit was described in a Notice of Violation from the Regional Board (see SCREEN CAPTURE 3). These failures demonstrate that LMI has failed to develop, implement, and/or revise an M&RP that complies with the requirements of Storm Water Permit.

Every day that LMI conducts operations in violation of the specific monitoring requirements of the Storm Water Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. LMI has been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least June 13, 2013. These violations are ongoing, and CCAT will include additional violations when information becomes available. LMI is subject to civil penalties for each daily violation of the Permit occurring since June 13, 2013.

E. Failure to Comply with the Storm Water Permit's Reporting Requirements.

Section B.14 of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year, which must include a summary of visual observations, data from storm water sampling, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any required activities, and other information specified in Section B.13. The 2015 Permit includes the same annual reporting requirements, and requires the Annual Report be submitted by July 15 each year. *See* 2015 Permit, Section XVI.

SCREEN CAPTURE 2

2012-2013
ANNUAL REPORT

SIDE A

FORM 5-ANNUAL COMPREHENSIVE SITE COMPLIANCE EVALUATION
POTENTIAL POLLUTANT SOURCE/INDUSTRIAL ACTIVITY BMP STATUS

EVALUATION DATE: 080312 INSPECTOR NAME: Tony Casillas TITLE: HSE Consultant SIGNATURE:

POTENTIAL POLLUTANT SOURCE/INDUSTRIAL ACTIVITY AREA (as identified in your SWPPP)			Describe deficiencies in BMPs or BMP implementation	Describe additional/revised BMPs or corrective actions and their date(s) of implementation
Vehicle & Material Handling Equipment Ferrous / Non Ferrous Metals/Sorting	HAVE ANY BMPs NOT BEEN FULLY IMPLEMENTED? ☐YES ☒NO	If yes, to either question, complete the next two columns of this form		
	ARE ADDITIONAL/REVISED BMPs NECESSARY? ☐YES ☒NO			
POTENTIAL POLLUTANT SOURCE/INDUSTRIAL ACTIVITY AREA (as identified in your SWPPP)	HAVE ANY BMPs NOT BEEN FULLY IMPLEMENTED? ☐YES ☐NO	If yes, to either question, complete the next two columns of this form	Describe deficiencies in BMPs or BMP implementation	Describe additional/revised BMPs or corrective actions and their date(s) of implementation

LMI has failed and continues to fail to submit complete and accurate Annual Reports, and has consistently failed to submit Annual Reports on time. For example, LMI has variously submitted Annual Reports indicating that the Facility has between 1 and 3 discharge points; submitted reports with incomplete (see SCREEN CAPTURE 2) or missing Annual Comprehensive Site Compliance Evaluations ("ACSCE"); and falsely certifying to the State of California that certain pollutants for which the Receiving Waters are impaired are not present at the Facility.

In addition, LMI has failed to report any noncompliance with the Permit at the time that the Annual Report is submitted, including 1) descriptions of the noncompliance and its cause, 2) the period(s) of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. 2015 Permit, § C.11.d.

Additionally, LMI submitted a demonstrably false and misleading report to the State of California titled Sampling Location Outfall #1 Elimination Technical Report ("2017 Technical Report"). The 2017 Technical Report was prepared by Athar Khan and is dated October 3, 2017. For starters, Mr. Khan's report seriously lacks clarity and is difficult to interpret. To the extent CCAT's understanding of the report is accurate, the report contains false and misleading information, and falsely certifies that the plan it outlines for elimination of a discharge point can and will be implemented at the Facility. CCAT alleges that the 2017 Technical Report constitutes intentional or grossly negligent and wrongful conduct, for which LMI is responsible. CCAT would be willing to consider *working with LMI* to ensure that Mr. Khan is held liable for his contribution to this violation of the Permit and Act.

CCAT alleges that LMI is in daily violation of the Permit for filing inaccurate, incomplete and intentionally false compliance reports. Every day LMI conducts operations at the Facility without reporting as required by the Permit is a separate and independent violation of the Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). LMI has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least June 13, 2013. These violations are ongoing, and CCAT will include additional violations when information becomes available. LMI is subject to civil penalties for all violations of the Act occurring since June 13, 2013.

IV. Persons Responsible for the Violations

CCAT puts LMI on notice that it is the entity responsible for the violations described above. If additional corporate or natural persons are identified as also being responsible for the violations described herein, CCAT puts LMI on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party

Jane Williams
California Communities Against Toxics (CCAT)
3813 50th Street West
Rosamond, CA 93560

VI. Counsel

Please direct all communications to legal counsel retained by CCAT for this matter:

Jesse Swanhuyser
Anacapa Law Group, Inc.
508 East Haley Street
Santa Barbara, CA 93103
(805) 689-1469
jswanhuyser@alg.law

VII. Penalties

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to $37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009 and $52,414.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, CCAT will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), CCAT will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

VIII. Conclusion

CCAT believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCAT intends to file a citizen suit under Section 505(a) of the Act against LMI, the Facilities and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CCAT would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCAT suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period as CCAT does not intend to delay the filing of a complaint in federal court.

Sincerely,

Jesse C. Swanhuyser
Lawyer for California Communities Against Toxics

VIA U.S. CERTIFIED MAIL

Jeff Sessions, U.S. Attorney General
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Scott Pruitt, Administrator
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William Jefferson Clinton Building
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Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency Region IX
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Thomas Howard, Executive Director
State Water Resources Control Board
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Sacramento, California 95812-0100

Deborah Smith, Executive Officer
LA Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

APPENDIX 1:
Dates with significant rain in Compton

Permit Term	Month	Day	Year	Precipitation (inches)
2012-2013	May	6	2013	0.69
2013-2014	November	23	2013	0.29
		29	2013	0.23
	December	19	2013	0.11
	February	2	2014	0.14
		27	2014	1.05
		28	2014	2.24
	March	1	2014	1.00
		2	2014	0.17
	April	1	2014	0.25
2014-2015	October	31	2014	0.25
	November	1	2014	0.18
		30	2014	0.30
	December	2	2014	1.21
		3	2014	0.31
		12	2014	1.60
		16	2014	0.41
		17	2014	0.15
		30	2014	0.19
	January	10	2015	0.48
		11	2015	0.50
	February	22	2015	0.70
		28	2015	0.11
	March	1	2015	0.66
		2	2015	0.21
	April	7	2015	0.13
	May	8	2015	0.18
		14	2015	0.69
2015-2016	July	18	2015	0.36
	September	15	2015	2.39
	October	5	2015	0.40
	December	13	2015	0.16
		19	2015	0.26
	January	5	2016	1.61
		6	2016	0.80
		7	2016	0.30
		31	2016	0.43
	February	17	2016	0.58
		18	2016	0.21
	March	6	2016	0.64
		7	2016	0.38

		11	2016	0.52
	April	8	2016	0.14
2016-2017	October	17	2016	0.34
	November	20	2016	0.55
		21	2016	0.20
		26	2016	0.13
	December	15	2016	0.43
		16	2016	1.28
		21	2016	0.50
		22	2016	0.27
		23	2016	1.41
		24	2016	0.14
		30	2016	0.39
	January	5	2017	0.35
		9	2017	0.77
		11	2017	0.39
		12	2017	1.13
		19	2017	0.98
		20	2017	1.51
		22	2017	2.67
		23	2017	0.33
	February	3	2017	0.23
		6	2017	0.88
		7	2017	0.27
		10	2017	0.30
		11	2017	0.21
		17	2017	2.01
	May	7	2017	0.30
2017-2018	October	20	2017	0.10
	January	8	2018	0.32
		9	2018	1.45
	March	2	2018	0.51
		10	2018	0.51
		15	2018	0.17
		16	2018	0.10
		21	2018	0.65
		22	2018	0.56